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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1947

No. 794

VAIL MANUFACTURING COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1947

No. 794

VAIL MANUFACTURING COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Supreme Court of the United States:

Your petitioner, Vail Manufacturing Company, an Illinois corporation, respectfully represents and shows to this Honorable Court that it seeks a writ of certiorari to review the final judgment of the United States Circuit Court of Appeals for the Seventh Circuit, denying your Petitioner's Motion for Leave to File Its Motion to Modify and Amend The Court's Decree Entered January 25, 1947, granting a petition for enforcement of an order of the National Labor Relations Board.

Statement of Matter Involved

The respondent, National Labor Relations Board, issued its decision and order dated March 31, 1945 (R. 9-19), and

upon petitioner's not complying therewith, respondent filed its petition for enforcement of the order with the Circuit Court of Appeals for the Seventh Circuit (R. 1-7).

The said court filed its opinion and decision granting the petition and affirming the board's order (R. 212-216). Following denial of petition for rehearing, the court of appeals entered its decree of January 25, 1947, enforcing the order of the board (R. 218-222).

On April 22, 1947, petitioner filed its petition for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit and the cause was docketed in the Supreme Court of the United States as cause No. 1280.

On June 2, 1947, this Court denied petitioner's petition for a writ of certiorari and petitioner subsequently filed its petition for a rehearing of cause No. 1280 on June 26, 1947.

On June 23, 1947, and while the petition for rehearing was pending in this court, the Congress of the United States, over a presidential veto, enacted into law the Labor Management Relations Act, 1947, which amongst other things, amended and modified the National Labor Relations Act of July 5, 1935, by divesting the National Labor Relations Board of all jurisdiction over the parties and the cause here involved.

On November 17, 1947, motion for leave to file a supplemental petition for rehearing was granted by this Court, but the petition for rehearing was denied.

Petitioner filed its "Motion For Leave To File Respondent's Motion To Modify And Amend The Decree Entered January 25, 1947" (R. 225-227), with the Circuit Court of Appeals for the Seventh Circuit, and said motion for leave to file was denied by that court on February 10, 1948 (R. 230).

The Facts

On the assumption that the employer in discharging two foremen, Joseph Mastik and Frank Mastik, violated rights guaranteed to them under Sections 8(1) and 8(3) of the National Labor Relations Act, the court below ordered reinstatement of the said employees with back pay. The review here sought is of the final judgment of the court of appeals as it relates to reinstatement with back pay of the aforesaid employees.

Although petitioner contended before the board that said employees were machine operators who were eligible to participate in union activities covering non-supervisory employees, the board found that they were in fact foremen and therefore not eligible to participate in said election (R. 11). The board also ruled against petitioner's contention that said employees did not quit petitioner's employment but were discharged for their refusal to be classified by petitioner as non-supervisory employees in order to swell the anti-union vote (R. 51-53, 125-126). Petitioner renewed its contention before the court of appeals, but the said court affirmed the board's finding and ordered reinstatement of said employees with back pay.

The law under which the decree of the court below dated January 25, 1947, was rendered was amended by enactment of the Labor Management Relations Act, 1947, which divested the National Labor Relations Board of all jurisdiction over foremen and supervisory employees (Appendix to Brief).

The petitioner was not granted an opportunity to have the merits of this cause determined under the law as it was amended because the court of appeals denied petitioner's motion for leave to file its motion to modify and amend the decree dated January 25, 1947.

Reasons Relied On for the Allowance of the Writ

1. The United States Circuit Court of Appeals for the Seventh Circuit "has decided an important question of federal law which has not been, but should be, settled by this court" (Sup. Ct. Rule 38 (5) (b)).

2. The final judgment of the court of appeals denying petitioner's "Motion For Leave To File Respondent's Motion To Modify And Amend The Decree Entered January 25, 1947", is in conflict with the decision of the Circuit Court of Appeals for the District of Columbia in *L. A. Young Spring and Wire Corp.* v. *National Labor Relations Board,* decided September 29, 1947, reported in 163 F. 2d 905, and which determined that supervisors were not subject to the jurisdiction of the National Labor Relations Board following enactment of the Labor Management Relations Act of 1947.

3. The court of appeals committed error in denying petitioner's motion in that it thereby denied petitioner its lawful right to have the issues and the merits of the cause considered under the amended provisions of the Labor Management Relations Act, 1947.

4. The court of appeals committed error in denying petitioner's motions because the Labor Management Relations Act, 1947, must be held to supersede the pre-existing decree of the court dated January 25, 1947, relative to the supervisors.

5. The court of appeals committed error in failing to give effect to the recognized doctrine that where jurisdiction of a tribunal is divested by statute, the court shall dismiss for want of jurisdiction.

6. The court of appeals erred by refusing to withdraw or modify and amend its injunctive order as it applied to

the supervisors so as to conform it to the requirements of the amended act.

7. The court of appeals committed error by permitting its decree of January 25, 1947, to remain in effect, thereby requiring petitioner to perform a useless formality no longer authorized or sanctioned by law.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the Seal of this Honorable Court directed to the Circuit Court of Appeals for the Seventh Circuit, commanding that court to certify and send to this Court for its review and determination, a full and complete transcript of the record and of the proceedings in the cause entered on its docket as No. 9107 entitled *National Labor Relations Board, Petitioner,* v. *Vail Manufacturing Company, Respondent,* and that the final judgment of the United States Circuit Court of Appeals for the Seventh Circuit may be reviewed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court shall seem just.

Respectfully submitted,

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Dated May 5, 1948.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1947

No. 794

VAIL MANUFACTURING COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion and Final Judgment of Court Below

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit dated January 2, 1947, is printed in the record (R. 212-216) and is reported in 158 F. 2d 664. The decree of the court of appeals dated January 25, 1947, is printed in the record (R. 218-222). The final judgment of the court of appeals denying "Motion for Leave to File Respondent's Motion to Modify and Amend the Decree Entered January 25, 1947", is printed in the record (R. 230).

II

Statement of Jurisdiction

Review is sought of the final judgment of the Circuit Court of Appeals for the Seventh Circuit entered February 10, 1948 (R. 230). Jurisdiction of this Court is invoked under Section 10(e) of the Management Labor Relations Act, 1947, and under Section 240 of the Judicial Code, as amended. (United States Code, Title 28, Section 347).

III

Statement of Case

A full statement of the case is set forth in the petition.

IV

Specification of Errors

The United States Circuit Court of Appeals for the Seventh Circuit erred in:

1. Denying Petitioner's Motion for Leave to File Motion to Modify and Amend the Decree Entered January 25, 1947, by said Court, when the law under which said decree was rendered had been amended and changed by enactment of the Labor Management Relations Act, 1947, which divested the National Labor Relations Board and the court of appeals of all jurisdiction over supervisors.

2. Refusing to give effect to the amended act which superseded the pre-existing decree dated January 25, 1947, and final judgment dated February 10, 1948, relative to these supervisors.

3. Refusing to withdraw or modify and amend the injunctive order and final judgment and to conform it to the requirements of the amended act.

4. Lending itself as an instrument through which petitioner is required to perform a useless formality no longer authorized or sanctioned by law.

V

ARGUMENT

Point A

The Law under Which the Decree of the Court of Appeals Was Rendered Had Been Changed and Amended by the Enactment of the Labor Management Relations Act, 1947, and Divested the National Labor Relations Board and the Court of Appeals of All Jurisdiction Over Supervisors.

On June 23, 1947, and while petitioner's petition for rehearing for writ of certiorari was pending in this Court, the Congress of the United States enacted into law the Labor Management Relations Act, 1947, which amended the National Labor Relations Act of July 5, 1935, by excluding foremen and supervisory personnel from participating in the benefits and protection afforded under the Act.

The specific provisions of the act upon which petitioner relies are Section 2 (3), (11), and Sections 8(a)(1), (3) and 10(c) (Appendix to Brief).

These sections specifically set forth the intention of the Congress to exclude foremen and supervisory personnel from the protection and benefits under the Act, by restrictively defining the term "employees" against whom an employer may commit an unfair labor practice, thereby depriving the National Labor Relations Board of all jurisdiction over the parties and the cause here involved.[1]

---

[1] During congressional debate in the Senate, Senator Flanders remarked: "Mr. President, I have not heard at any time in the discussion of this bill what seems to me an adequate explanation of the reasons for removing

Point B

When Jurisdiction of a Tribunal Is Divested by Statute, the Court Shall Dismiss for Want of Jurisdiction

The time honored rule recognized and enforced by this Court as well as other Federal courts of appellate jurisdiction is: the court must dismiss a proceeding regardless of whether it has gone to a higher court when a right created by statute has been abolished by a subsequent act of Congress.

Under such circumstances, it is the duty of the court in disposing of a matter to apply the law as it now exists. Since its decision in the case of *United States* v. *Schooner Peggy*, 1 Cranch 103, 110, an unbroken line of decisions emanating from this Court support this doctrine:

Western Union Tel. Co. v. *Louisville & Nashville Railroad Co.*, 258 U. S. 13;

Gwin v. *United States*, 184 U. S. 669, 674;

Baltimore & Potomac Railroad Co. v. *Grant*, 98 U. S. 476;

United States v. *Tynen*, 11 Wall. 88;

Norris v. *Crocker*, 13 How. 429;

State of Maryland v. *Baltimore & Ohio Railroad Co.*, 3 How. 534;

Dinsmore v. *Southern Express Co.*, 183 U. S. 115.

---

this supervisory force from the area of collective bargaining. The reasons are simple and direct. Unless the employer can hire and discharge, promote, demote, and transfer these men, he has lost the control of his business. He cannot run it effectively. If he cannot run it effectively and efficiently, he cannot continue in business profitably. If he cannot operate profitably, he is a bad manager, not only from the stockholders' standpoint, but also from that of the working force as well. Only the profitable business can furnish sustained employment at good wages. At this point the interests of stockholders and employees are identical."—Congressional Record, Vol. 93, page 4804, Proceedings and Debates of the 80th Congress, First Session, May 7, 1947.

In considering the application of the Labor Management Relations Act, 1947, as it relates to the status of supervisors, the court in *L. A. Young Spring & Wire Corp.* v. *National Labor Relations Board* (C. C. A., District of Columbia), September 29, 1947, 63 F. 2d 905, held that since the statute must be applied in its amended form, the court had no alternative but to set aside the order of the Board, which, if allowed to stand, would operate *in futuro* in a manner contrary to the amended statute.

The Court stated at Pages 906-907:

> ". . . It is now unmistakably clear, however, that the 80th Congress intended to deny, and has denied, the benefits of the Act to 'supervisors' ".
>
> "In these circumstances, it is the duty of this Court in disposing of this matter to apply the law as it now exists." See authorities cited therein, page 907.

Thus the rule for which petitioner contends is especially applicable to a proceeding such as this one, in which the relief granted operates *in futuro*. In cases in which an injunction is sought, the courts apply the law prevailing at the time of the disposition of the question on appeal, and not the law which prevailed at the time the decree appealed from was rendered.

Texas Company v. *Brown*, 258 U. S. 466, 474;

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443, 464;

American Steel Foundries v. *Tri-City Central Trades Council*, 257 U. S. 184, 201.

This Court has recognized the inherent power of the Circuit Courts of Appeals to modify, vacate or grant other relief in cases pending in the courts at the time that the Labor Management Relations Act, 1947, was enacted into law. Following this rule, this Court refused jurisdiction of this cause by denying petitioner's petition for rehear-

ing for a writ of certiorari. This Court further emphasized the rule by refusing to modify or amend its own mandate issued prior to passage of the amended act in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, No. 418, November 17, 1947, 92 L. Ed. 119 (Advance Sheets), by remanding the case to the court of appeals for further proceedings in accordance with the provisions of the amended act.

The procedure followed by this Court in the above cases is full authority for the doctrine that it is the duty of the lower courts to reconsider their decrees entered prior to the enactment of the Labor Management Relations Act, 1947, in the light of the changes made in the law.

POINT C

The Amended Act Must Be Held to Supersede the Pre-existing Judgment of the Court of Appeals Relative to These Supervisors.

As pointed out in the authorities cited under petitioner's Point E herein, orders of the National Labor Relations Board, in cases such as this, are designed to enforce or protect public as distinguished from private rights. However, it has much longer been recognized that the injunctive decree of a Federal court intended to give effect to or enforce a public right, is superseded by a subsequent act of Congress which defines or limits the public right in a manner inconsistent with the court's decree.

The leading case on this point is *Pennsylvania* v. *The Wheeling & Belmont Bridge Co.*, 59 U. S. (18 How.) 421. In that case, this Court declared that a bridge across the Ohio River was a public nuisance and granted an injunction commanding its abatement. Before the injunction had been obeyed or given effect, an act of Congress declared the

bridge a lawful structure. In subsequent proceedings, the court held that insofar as it secured public rights, the injunction had been wholly superseded by the Act of Congress. Mr. Justice Nelson there said:

> ". . . But that part of the decree directing the abatement of the obstruction, is executory, a continuing decree, which requires not only the removal of the bridge, but enjoins the defendants against any reconstruction or continuance. Now, whether it is a future existing or continuing obstruction depends upon the question whether or not it interferes with the right of navigation. If, in the meantime, since the decree, this right has been modified by the competent authority, so that the bridge is no longer an unlawful obstruction, it is quite plain the decree of the court cannot be enforced. . . ."
>
> "Upon the whole, . . . our conclusion is, that, so far as respects that portion of the decree which directs the alteration or abatement of the bridge, it cannot be carried into execution since the Act of Congress which regulates the navigation of the Ohio River, consistent with the existence and continuance of the bridge; and that this part of the motion, in behalf of the plaintiff, must be denied. . . ."
>
> "The motion for the attachment is denied, and the injunction dissolved."

Point D

The Injunctive Order as It Applies to the Supervisors Should Either Be Withdrawn or Modified and Amended to Conform to the Requirements of the Amended Act.

In a case such as this, where Congress by law establishes public rights, the duty of the court is that of interpreting and executing the will and intent of the Congress.

As a result, if the congressional purpose and policy is changed or is clarified, the courts are required, and they

have been accustomed, to modify and amend accordingly their decisions and decrees in pending cases, and such of their decrees and orders in past cases, as remain in continuing effect and which operate *in futuro:*

Duplex Printing Press Co. v. *Deering,* 254 U. S. 443;
American Steel Foundries v. *Tri-City Council,* 257 U. S. 184;
Texas Co. v. *Brown,* 258 U. S. 466;
U. S. v. *The Schooner Peggy,* 1 Cranch 103;
Dinsmore v. *Southern Express Co.,* 183 U. S. 115;
Rafferty v. *Smith, Bell & Co.,* 257 U. S. 226.

This practice of the Federal courts is an old application of the general rule that no equitable injunction is, in any literal sense, a "permanent" injunction. It is well recognized that every injunctive order must be adapted to the changing circumstances of fact and law.

This doctrine is succinctly stated in *United States* v. *Swift & Co.,* 286 U. S. 106, by Mr. Justice Cardozo as follows (pp. 114-115):

> "We are not doubtful of the power of the court of equity to modify an injunction in adaptation to changed conditions. . . . A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need. . . . The result is all one whether the decree has been entered after litigation or by consent." (Citing authorities.) "In either event, a court does not abdicate its power to revoke or modify its mandate if satisfied that what it has been doing has been turned through changing circumstances into an instrument of wrong."

The doctrine is likewise given effect in *Milkwagon Drivers Union* v. *Meadowmoor Dairies,* 312 U. S. 287, where it is stated at page 298:

> ". . . Familiar equity procedure assures opportunity for *modifying* or *vacating* an injunction when its

continuance is no longer warranted." (Emphasis supplied.)

It is submitted that the change in the law requires that the court of appeals modify and amend its decree so as to give effect to the law as it now exists.

Point E

The Court Will Not Lend Itself to Requiring a Useless Formality No Longer Authorized or Sanctioned by Law.

The enforcement of the Board's order and of the final judgment of the court of appeals means that petitioner would be required to (a) offer reinstatement to the two supervisors, Joseph Mastik and Frank Mastik; (b) make them whole as to any loss in pay; (c) post a notice in which it would say to all of its employees that it would do the foregoing.

To require such action of petitioner is a useless formality, which because of the changes in the law, no longer is authorized or sanctioned.

If petitioner reinstated the foremen and discharged them immediately thereafter, there is no statute upon which the board could then proceed.

What if petitioner posted the notices required by the Board's order, but deleted the names of the Mastiks therefrom? In other words, had this action been brought after the law was changed, the court of appeals would be required to dismiss the proceedings for lack of jurisdiction over the supervisors.

As for the money to be paid to supervisors in the form of back pay, said payment was enforceable under the Na-

tional Labor Relations Act, 1935, only in the public interest. No private right was involved. See:

Virginia Electric & Power Co. v. *National Labor Relations Board,* 319 U. S. 533, 543;

Amalgamated Utility Workers v. *Consolidated Edison Co.,* 309 U. S. 261, 267, 269;

National Labor Relations Board v. *Fansteel Metallurgical Corp.,* 306 U. S. 240, 257;

Consolidated Edison Co. v. *National Labor Relations Board,* 305 U. S. 197, 236;

National Licorice Co. v. *National Labor Relations Board,* 309 U. S. 350, 362;

Agwilines, Inc. v. *National Labor Relations Board,* 5 Cir., 87 F. 2d 146, 150, 151.

The final judgment also requires petitioner to offer the Mastiks reinstatement as well as make them whole for loss of pay, but the power to command affirmative action is not punitive. *Republic Steel Corp.* v. *National Labor Relations Board,* 311 U. S. 7, 10, 12. *National Labor Relations Board* v. *Thompson Products, Inc.,* 6th Cir., 130 F. 2d 363, 367. Nor does the Act create any private right. *Virginia Electric & Power Co.* v. *National Labor Relations Board,* 319 U. S. 533, 543; *Agwilines, Inc.* v. *National Labor Relations Board,* 87 F. 2d 146. The proceeding under the Act is not compensatory. *National Labor Relations Board* v. *Thompson Products, Inc.,* 130 F. 2d 363. Nor is there any other reason to remove and avoid the consequences of something which is not now guaranteed. *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 236. No remedial objective would be accomplished by enforcing reinstatement and back pay.

Since supervisors are now no longer within the coverage of the National Labor Relations Act as amended, there is no public right remaining in the matter.

We therefore submit that the final judgment of the court of appeals is erroneous and should be reversed.

Respectfully submitted,

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Dated May 5, 1948.

APPENDIX

Pertinent Provisions of the Labor Management Relations Act, 1947

"Title I

Amendment of National Labor Relations Act

"Definitions

"Sec. 2. When used in this Act—

"(3) *The term 'employee'* shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but *shall not include* any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or *any individual employed as a supervisor*, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined." (Italics supplied.)

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

"Sec. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce *employees* in the exercise of the rights guaranteed in section 7;"

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . ."

"Sec. 10. (c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint *has engaged in or is engaging in any such unfair labor practice,* then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist *from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: Provided,* That where an order directs reinstatement of an *employee,* back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him:" (Italics supplied.)

"Limitations

"Sec. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

"Sec. 104. *The amendments made by this title shall take effect sixty days after the date of the enactment of this Act* . . ." (Italics supplied.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 794

VAIL MANUFACTURING COMPANY, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The order of the court below (R. 230), denying petitioner's motion for leave to file its motion to modify and amend the decree entered by the court below on January 25, 1947, was entered without opinion and is not reported. The opinion of the court below (R. 212-216), which accompanied its decree of January 25, 1947, is reported in 158 F. 2d

664. The order of this Court, entered June 2, 1947, denying the petition for a writ of certiorari to review that decree (No. 1280, October Term, 1946) is reported in 331 U. S. 835 and the order of this Court entered November 17, 1947, granting petitioner's motion for leave to file a supplemental petition for rehearing but denying the petition for rehearing, is reported in Journal, S. Ct., 1947 Term, p. 72, and 332 U. S. 826. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 9-59) are reported in 61 N. L. R. B. 181.

JURISDICTION

The order of the court below (R. 230), denying petitioner's motion for leave to file its motion to modify and amend the decree entered by the court below on January 25, 1947, was entered on February 10, 1948. The petition for a writ of certiorari was filed on May 10, 1948. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended, and under Section 10 (e) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

More than four months prior to the enactment of the Labor Management Relations Act of 1947 and more than six months before its effective date, the court below entered a decree which, *inter alia*, required an employer to reinstate with back pay

two supervisors who had been discriminatorily discharged in violation of Section 8 (1) and (3) of the National Labor Relations Act because of their refusal to acquiesce in the employer's scheme of classifying them as non-supervisory employees in order to have them vote against a union in an election to be conducted by the Board among non-supervisory employees. The questions presented are:

1. Whether the Labor Management Relations Act of 1947 made any change in the law which would prevent the Board in the future from ordering reinstatement of supervisors with back pay in circumstances such as those present in this case.

2. If the foregoing question is answered in the affirmative, whether that statute operates retroactively so as to empower the court below to modify and amend its decree as requested by the employer.

3. If both the foregoing questions are answered in the affirmative, whether it was an abuse of discretion for the court below under the circumstances of this case to deny the employer leave to file its motion to modify and amend the decree.

STATUTES INVOLVED

The pertinent provisions of the National Labor Relations Act of 1935 (49 Stat. 449, 29 U. S. C. 151, *et seq.*) and of the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C. A., Supp.

1947, 141, *et seq.*) are set forth in the Appendix, *infra*, pp. 20-28.

STATEMENT

Upon the usual proceedings under Section 10 of the National Labor Relations Act, the Board, on March 31, 1945, issued its findings of fact, conclusions of law, and order (R. 8-59). The pertinent facts, as found by the Board, may be summarized as follows:

The Company's employees began to join the United Steelworkers of America, affiliated with the C. I. O., hereinafter called the Union, during the summer and fall of 1943 (R. 23-24). On November 29, 1943, the Union filed with the Board a petition for investigation and certification seeking to establish its status as collective bargaining representative of the Company's non-supervisory employees (R. 24; 125). Between November 29, 1943, and December 4, 1943, the Company engaged in an active campaign to coerce its employees to abandon the Union and discriminatorily discharged twenty-three non-supervisory employees because of their membership and activity in the Union (R. 10-11, 14, 25-50, 56-57).

As part of its campaign to defeat the Union, the Company attempted to swell the anti-union vote and to prevent the employees from making a genuine choice of bargaining representative by placing on the list of non-supervisory employees eligible to vote in the Board-conducted election the names of

Frank and Joseph Mastik, brothers, who were supervisors with the power effectively to recommend employees for promotion and discharge (R. 11, 25, n. 4, 50). Upon being informed by the Company that their names had been included among the non-supervisory employees on the eligibility list so that they could vote against the Union, the Mastik brothers protested to the Company that they would not agree to such a course of conduct (R. 11, 50-53). Thereupon the Company, on December 6, 1943, discharged Frank and Joseph Mastik because of their refusal to participate in its scheme to swell the anti-union vote (R. 11, 50-54). Frank Mastik had worked for the Company since 1922 and had been in charge of the day shift in the standard staple department for nine years (R. 50). Joseph Mastik had worked for the Company since 1935 and had been in charge of the night shift in the same department for four years (R. 50).

The Board concluded that the Company, by attempting to persuade the Mastiks to consent to classification as non-supervisory employees for the purpose of voting against the Union in the contemplated Board election, interfered with the rights guaranteed its non-supervisory employees by Section 7 of the Act, thereby committing an unfair labor practice within the meaning of Section 8(1) of the Act (R. 11-12, 54). The Board also concluded that the Company, by discharging the Mastiks for refusing to assist it in the commission

of an unfair labor practice, violated Section 8(1) and (3) of the Act (R. 11-12, 54). In answering petitioner's contention that the discharges could not be regarded as violative of Section 8(3) because they would not discourage membership in the Union, the Board pointed out that (R. 11-12):

> It is a reasonable inference that, in a small plant such as the respondent's, where the employees are aware of the [Company's] opposition to the Union, the discharge of supervisory employees for refusing to aid the [Company] in its campaign against the Union would come to the attention of the ordinary employees, would cause such employees reasonably to fear that the respondent would take similar action against those who favored the Union, as in fact it did, and would therefore discourage membership in the Union.

The Board found that the discharges would "similarly" interfere with, restrain and coerce employees in the exercise of rights guaranteed by Section 7 and "hence in addition constituted an independent violation of Section 8(1) of the Act" (R. 12).

The Board further found that "whether the discharges be viewed as violations of Section 8(1) or of Section 8(3) of the Act," reinstatement of the Mastiks with back pay "is necessary" in order to effectuate the policies of the Act (R. 12).

Accordingly, the Board by its order directed the Company to cease and desist from its unfair labor

practices, to reinstate with back pay the employees discriminatorily discharged, including Frank and Joseph Mastik, and to post appropriate notices (R. 15-17).

The Board filed a petition for enforcement of its order in the court below (R. 1-7), and on January 2, 1947, the court handed down its opinion (R. 212-216) and on January 25, 1947, entered its decree (R. 218-222), enforcing in full the Board's order.

The Company thereafter filed in this Court its petition for a writ of certiorari to review the decree of the court below, and this Court on June 2, 1947, denied that petition. 331 U. S. 835. Subsequently, the Company filed in this Court a petition for rehearing and a motion for leave to file a supplemental petition for rehearing in which it urged that the Labor Management Relations Act of 1947, by amending the National Labor Relations Act to exclude from the definition of employee contained in Section 2(3) individuals employed as supervisors, required the modification of the decree below to exclude therefrom the provision for the reinstatement of the Mastiks with back pay. This Court on November 17, 1947, granted the Company leave to file its supplemental petition for rehearing but denied the rehearing (Journal S. Ct., 1947 Term, p. 72, 332 U. S. 826).

On December 30, 1947, the Company filed in the court below its "Motion for Leave to File Respondent's Motion to Modify and Amend the Decree

Entered January 25, 1947", alleging that the Labor Management Relations Act of 1947 constituted grounds for modifying and amending that part of the decree ordering reinstatement of the Mastiks with back pay and ordering that a notice be posted stating the Company would offer such reinstatement and back pay (R. 225-228). The court below, on February 10, 1948, denied the motion of the Company for leave to file its motion to modify and amend (R. 230).

ARGUMENT

1. The Company's present petition for a writ of certiorari is premised on the assumption that the Labor Management Relations Act of 1947 made a change in the National Labor Relations Act so that the Board and the courts would no longer have the power to order reinstatement of supervisors with back pay under circumstances such as those present in this case (Pet. 2, 3, 4, 5, 8, 9, 15, 16). Petitioner argues that Congress, by amending the definition of the term "employee" as used in the National Labor Relations Act to exclude therefrom "any individual employed as a supervisor" (Section 2(3) of the National Labor Relations Act, as amended), has so changed the law applicable to this case as to require a modification and amendment of the decree below insofar as it ordered the Company to offer reinstatement with back pay to the Mastiks and to post notices to that effect (Pet. 4-5, 8-9, 15-

16). This is the precise question raised by petitioner in its "Motion for Leave to File a Supplemental Petition for Rehearing", filed in this Court after the passage of the Labor Management Relations Act and denied during the present Term.

The effect of the exclusion of "any individual employed as a supervisor" from the definition of the word "employee" as used in the Act is to deprive supervisors of any protection in the future should they attempt to organize and bargain collectively. However, in the instant case, the Board's order requiring reinstatement of two supervisors with back pay is not a remedy for any interference by the Company with the efforts of its supervisors to organize. The two Mastiks had never been union members nor interested themselves in any way in union activities. Contrary to petitioner's assertion that the Board and the court assumed that "the employer in discharging two foremen, Joseph Mastik and Frank Mastik, violated rights guaranteed to them under Section 8(1) and 8(3) of the National Labor Relations Act" (Pet. 3), neither the Board nor the court below so assumed. Rather both the Board and the court expressly found that the Mastiks were discharged as part of a campaign by the Company to defeat self-organization by its non-supervisory employees (R. 11) in a fraudulent effort to swell the anti-union vote at an election to be conducted by the Board among non-supervisory employees (R. 11-12, 50-54). The Board's findings

were based solely on the violation of the rights of non-supervisory employees and its order was premised solely on the need to remedy such violations (R. 12).

There is nothing in the Labor Management Relations Act of 1947 which changes the rights of non-supervisory employees in any respect here relevant. Sections 8(1) and 8(3) of the old Act are incorporated in Sections 8(a)(1) and 8(a)(3) of the amended Act. Nor is there anything in the legislative history of the exclusion of supervisors from the protection of the Act which would indicate that Congress intended to make any change in the law which the Board and the courts have heretofore uniformly applied in situations such as this where the discharge of the supervisory employee was an invasion of the rights guaranteed to non-supervisory employees.[1] All of the statements made during Congressional proceedings leading to the enactment of the Labor Management Relations Act of 1947, either by proponents or opponents of the exclusion of supervisors from the term employee refer to the relative merits of barring or allowing supervisors to join unions and bargain collec-

[1] *National Labor Relations Board* v. *Richter's Bakery*, 140 F. 2d 870, 872-873 (C. C. A. 5), certiorari denied, 322 U. S. 754; *Eagle-Picher Mining & Smelting Co.* v. *National Labor Relations Board*, 119 F. 2d 903, 912-913 (C. C. A. 8); *Matter of Ronrico Corp.*, 53 N. L. R. B. 1137, 1169; *Matter of Reliance Mfg. Co.*, 60 N. L. R. B. 946, 950-952, 963-964.

tively.[2] No one suggested that supervisors could properly be discharged for refusals to participate in unfair labor practices or denied reinstatement with back pay in the event of such discharges.

The exclusion of supervisors from the term employee does not deprive the Board of the power to order reinstatement of foremen. This Court, addressing itself to a related problem, has held that the power conferred on the Board by Section 10(c) of the Act, which in this respect remains unchanged by the amendments, "to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act," was not limited to the reinstatement of persons who were employees within the meaning of the Act. Thus in *Phelps Dodge Corp.* v. *National Labor Relations Board,* 313 U. S. 177, 188-189, this Court pointed out that the phrase "including reinstatement of employees" was not intended to narrow the broad power conferred by the authorization to "take such affirmative action * * * as will effectuate the policies of this Act." Cf. *National Labor Relations Board* v. *Waumbec Mills, Inc.,* 114 F. 2d 226, 235-236 (C. C. A. 1).

In view of this state of the law, we believe that were an employer in the future to discharge su-

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[2] H. Rep. No. 245, on H. R. 3020, 80th Cong., 1st Sess., p. 15; S. Rep. No. 105, on S. 1126, 80th Cong., 1st Sess., pp. 4-5; 93 Cong. Rec. 3423 (Hartley), 3836 (Taft), 5014 (Ball), 4136-4137 (Ellender), 3443 (Gwinn), 6501 (Murray), 4985 (Pepper), 3446 (Klein).

pervisors under circumstances of the type here present, the Board could properly make the same findings of fact and enter the same order under the Act as amended as it did in the case at bar.

2. However, even if it be assumed that the exclusion of supervisors from the term employee as used in the National Labor Relations Act effects a change in the law which would preclude the Board from finding that future discharges of supervisors for failure to commit unfair labor practices are violative of the Act and remediable by reinstatement and back pay, still we do not believe that the Labor Management Relations Act of 1947 has a retroactive effect on the decree in this case. Here the Mastiks were discharged on December 6, 1943 (R. 50-54). The Board's findings of fact and order were entered on March 31, 1945 (R. 17). The decree of the court below enforcing the Board's order was entered January 25, 1947 (R. 218). The decree of the court below was thus entered more than four months before the enactment of the amendatory Act and more than six months prior to its effective date. No question is here raised as to the validity of the decree as of the time it was issued and for six months thereafter, or as to the illegality of the Company's conduct during the three years preceding. Had the Company, therefore, complied, as it should have, at any time during the almost seven months prior to the effective date of the amendatory Act with the then admittedly valid decree,

nothing would have remained to be decided. The Company, however, persisted in its refusal to comply until the passage of the amendment in question and thereafter until its effective date, and now seeks to utilize its failure to comply with that decree as a basis for non-compliance thereafter. The Company should not be permitted to benefit by reason of its long continued refusal to obey the law. Cf. *United States ex rel. Randall* v. *U. S. Marshal for Eastern District of New York,* 143 F. 2d 830 (C. C. A. 2).[3]

Moreover, entirely apart from the fact that the Company's obligation to remedy its unfair labor practices by reinstating the Mastiks with back pay had been embodied in a valid decree prior to the enactment of the Labor Management Relations Act, we believe that the Company's liability to reinstate the Mastiks with back pay became fixed at the time of the unlawful discharges and is not affected by any change which may have been made in the law. The general savings statute (1 U. S. C. 29) preserves liabilities created by repealed statutes unless the subsequent act otherwise provides.

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[3] To the same effect see *United States ex rel. Cheramie* v. *Dutton,* 74 F. 2d 740 (C. C. A. 5), certiorari denied, 295 U. S. 733 (sentence became final month before effective date of repeal); *Welch* v. *Hudspeth,* 132 F. 2d 434 (C. C. A. 10); *United States ex rel. Nerbonne* v. *Hill,* 70 F. 2d 1006 (C. C. A. 3), certiorari denied, 292 U. S. 634; *Odekirk* v. *Ryan,* 85 F. 2d 313 (C. C. A. 6); *United States ex rel. Voorhees* v. *Hill,* 72 F. 2d 826 (C. C. A. 3); *Hosier* v. *Aderhold,* 71 F. 2d 422 (C. C. A. 5).

The term "liability" as used in the general savings statute has been broadly construed to comprehend all obligations arising out of any breach of a statutory duty,[4] and would clearly include the Company's obligation to reinstate the Mastiks with back pay. Hence, under the terms of the general savings statute, that obligation continues to be binding upon the Company, even though the Labor Management Relations Act be held to have changed the applicable law for the future, unless the Congress manifested therein an intention to extinguish liabilities previously incurred under the original National Labor Relations Act. See *Great Northern Ry. Co.* v. *United States,* 208 U. S. 452, 465; *Maceo* v. *United States,* 46 F. 2d 788, 789 (C. C. A. 5).

The Labor Management Relations Act contains no provision relieving an employer from any liability arising out of any unfair labor practice committed before the enactment of that Act. On the contrary, the history of the Labor Management Relations Act shows that Congress considered but rejected a proposal which would have supplanted the rule of statutory construction created by the gen-

[4] See, e.g., *United States* v. *Reisinger,* 128 U. S. 398, 403; *Hertz* v. *Woodman,* 218 U. S. 205, 218; *United States* v. *U. S. Industrial Alcohol Co.,* 8 F. Supp. 179, 181-183 (D. Md.); *United States* v. *Four Cases of Lastings,* Fed. Case No. 15,145 (S. D. N. Y.); *Tinker* v. *Van Dyke,* Fed. Case No. 14,058 (C. C. E. D. Mich.); *De Four* v. *United States,* 260 Fed. 596, 599 (C. C. A. 9), certiorari denied, 253 U. S. 487.

eral savings statute. Thus, a provision of Section 102 (c) of the bill passed by the House, which would have had the effect of prohibiting entry by the Board or enforcement by the courts of any order based on prior unfair labor practices unless the conduct continued to be an unfair labor practice under the Amendments, was eliminated in conference (see Section 102(c) of H. R. 3020, 80th Cong., 1st Sess.; Conf. Rep., H. Rep. No. 510, 80th Cong., 1st Sess., p. 61. Accordingly both the Board[5] and the courts[6] have held that the general savings statute must be deemed to preserve all "liabilities" arising under the National Labor Relations Act prior to its amendment and that for such purposes the original Act must "be treated as still remaining in force," regardless of whether the amendments to the Act would prevent such liabilities from arising in the future.

The action of this Court with respect to the reinstatement of a foreman with back pay supports this conclusion. *National Labor Relations Board* v. *Edward G. Budd Mfg. Co.*, 162 F. 2d 461 (C. C. A. 6), certiorari granted with respect to the cease and

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[5] *Matter of Marshall & Bruce Co.*, 75 N. L. R. B., No. 13, 21 L. R. R. M. 1001; *Matter of Pioneer Electric Co.*, 75 N. L. R. B., No. 14, 21 L. R. R. M. 1006.

[6] *National Labor Relations Board* v. *Mylan-Sparta Co., Inc.*, 166 F. 2d 485, 488 (C. C. A. 6); *National Labor Relations Board* v. *National Garment Co.*, 166 F. 2d 233, 236-237 (C. C. A. 8), pending on petition for certiorari, No. 785, this Term.

desist provisions but denied with respect to reinstatement and back pay. 332 U. S. 840.

3. While we believe that the Labor Management Relations Act neither changed the law in any respect pertinent to this case nor operates retroactively in such instances as it does change the law, even if we were wrong in either one or both of the foregoing positions, still the court below acted within the proper exercise of its discretion in refusing the Company leave to file its motion to modify and amend the decree. The courts have always recognized that there must sometime be an end to litigation. The proceedings in this case before the Board and the courts had taken several years. This Court had denied applications for both certiorari and a rehearing based on grounds identical with those sought to be urged upon the court below in the motion to modify and amend the decree. Under these circumstances it could not possibly have been an abuse of discretion for the court below to deny the Company a further hearing on the propriety of the reinstatement of the Mastiks with back pay.

4. Petitioner's further contention, that enforcement of the reinstatement, back pay and posting of notices provisions of the decree below so far as they apply to the Mastiks would be a useless formality (Pet. 5, 9, 15-16), is also without merit. These provisions are all as necessary today to assure the nonsupervisory employees that the Company cannot with impunity force its supervisors to engage in

unfair labor practices as they were at the time the decree below was issued. And even if the law were in fact changed by the new Act so that such a remedy cannot be imposed for future discharges of supervisors for refusing to engage in unfair labor practices with respect to non-supervisory employees, the relief here accorded, reinstatement and back pay, operates retrospectively rather than prospectively. Cf. *National Labor Relations Board* v. *Sandy Hill Iron & Brass Works,* 165 F. 2d 660, 662 (C. C. A. 2); *National Labor Relations Board* v. *Killoren,* 122 F. 2d 609, 612 (C. C. A. 8). Certainly a judgment awarding back pay would not be futile or a formality. And an order of reinstatement would place the Mastiks in the same position they would have occupied if the Company had obeyed the law in effect at the time it discharged the Mastiks and the decree of the court below when it was entered. The notice posting is essential to assure non-supervisory employees that wrongs inflicted in efforts to defeat their self-organization are being righted and that their rights will be respected in the future.

5. The Company asserts that the action of the court below presents a conflict with the decision of the United States Court of Appeals for the District of Columbia in *L. A. Young Spring & Wire Corp.* v. *National Labor Relations Board,* 163 F. 2d 905, certiorari denied February 16, 1948, No. 502, this Term (Pet. 4, 11). This contention is

without merit. That case did not involve an order of reinstatement and back pay but rather a direction to an employer to bargain collectively with a union as the representative of its foreman. The order therefore operated solely prospectively and required the employer to observe for the future a relationship with his supervisory employees which the law no longer requires him to observe. The same is true of *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 332 U. S. 823, involving an order to bargain collectively in the future with plant guards through a union no longer eligible to serve as their bargaining representative.

All of the other cases relied upon by petitioner either rest on the common law rule of remission of liability by repeal which was changed by the general savings statute[7] or are cases involving the establishment by an injunction of a rule of conduct to be observed in the future which would be contrary to the law in effect at the time the rule is to be observed.[8]

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[7] *United States* v. *Schooner Peggy*, 1 Cranch 103, 110; *United States* v. *Tynen*, 11 Wall. 88; *Norris* v. *Crocker*, 13 How. 429; *State of Maryland* v. *Baltimore & Ohio Railroad Co.*, 3 How. 534, all cited in the petition for certiorari, p. 10, see also p. 14, were decided prior to 1871, the date of the general savings statute.

[8] See the other cases cited in the petition for certiorari, pp. 10, 11, 14-15. In *Pennsylvania* v. *The Wheeling & Belmont Bridge Co.*, 18 How. 421 (Pet. 12) although the injunction against the construction and maintenance of a bridge was dissolved in view of an intervening act of Congress specifically authorizing maintenance of the bridge at its then site

6. The issue in this case is of no general importance. No other cases are pending in the courts where a supervisor was discharged for failure to commit an unfair labor practice.

CONCLUSION

The National Labor Relations Board submits that the action of the court below in denying the Company leave to file its motion to modify and amend the prior decree of the court below was entirely proper and correct. No conflict of decisions is presented and no question of general importance is raised. The petition should, therefore, be denied.

Respectfully submitted,

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National Labor Relations Board.

June 1948

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and elevation, that part of the decree which had awarded costs to the petitioner was held to have passed "beyond the reach of the power of congress" and was not altered (at pp. 431-432).

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C., 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

3. The term "employee" shall include any employee, * * *.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *.

* * * * *

SEC. 10. (e) The Board shall have power to petition any circuit court of appeals

of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if ap-

plication was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it

deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

2. The relevant provisions of the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C. A., Supp. 1947, 141, *et seq.*) are as follows:

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

"SEC. 2. When used in this Act—

* * * * *

"(3) The term 'employee' shall include any employee, * * * but shall not include any individual employed * * * as a supervisor, * * *.

* * * * *

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or cleri-

cal nature, but requires the use of independent judgment.

* * * * *

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

"SEC. 10. * * * (e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the

District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme

Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

"(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or set-

ting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

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"SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

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SEC. 103. No provisions of this title shall affect any certification of representatives or any determination as to the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs.

SEC. 104. The amendments made by this title shall take effect sixty days after the date of the enactment of this Act, except

that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title may be exercised forthwith.

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